Filed 8/21/12 In re T.J. CA3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re T.J., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES, Plaintiff and Respondent, v. E.J., Defendant and Appellant.	A134053 (Alameda County Super. Ct. No. OJ11017877)

E.J. (Father) challenges the juvenile court's decision to deny him reunification services in this dependency action concerning his 13-year-old daughter, T.J. He contends the juvenile court's orders are unsupported by the evidence. We agree, and reverse the order.

BACKGROUND

The following facts were taken primarily from the initial and addendum reports prepared for the combined jurisdiction and disposition hearing, and are not disputed. T.J. was removed from her mother's home after a physical altercation between her and her mother that apparently began when Mother learned T.J. had been smoking marijuana. T.J. punched Mother and pulled out some of her hair. Mother grabbed a kitchen knife and threatened to hurt or kill T.J. unless the police took the "b----" away. Mother is on

medications for bipolar disorder and depression, but she sometimes stops taking them because they make her too groggy to care for T.J. She has 24 hour in-home assistance due to her various physical and mental health problems.

Mother and Father shared legal custody of T.J. They lived together as a couple from before T.J. was born until Father moved to Louisiana in 2007, but did not marry until T.J. was 9 years old. For some period of time in 2008 and again in 2010 for about six months, T.J. lived with Father in Louisiana. Then, in December 2010, Father was arrested and incarcerated for what T.J. said was a DUI, but the Agency reported as "unknown charges." T.J. spent the next few months with an aunt in Louisiana before she returned to Mother's home in March 2011. Counsel appointed for Father at the November 2, 2011 detention hearing sent notices of this dependency action to Father at his jail address, but had not heard back from him by the jurisdiction/disposition hearing held on November 14.

The Alameda County Social Services Agency (the Agency) initially recommended that T.J. be returned to Mother, but later, with Mother's agreement, changed its recommendation to placement with a maternal aunt while Mother received reunification services. The Agency also recommended denying Father reunification services because he was incarcerated out of state and "it is impossible to offer him services." Father's counsel objected to that recommendation on the basis that there was no evidence to support a finding that providing Father with services would be detrimental to T.J. The Agency responded that its reports showed Father had a history of being "in custody and out" and that, while the parents had previously shared custody, neither of them was "stable in terms of being able to provide a stable home." Moreover, according to counsel: "[t]he father's currently incarcerated. It would not be in the minor's best interest to fly her out to Louisiana, if we're going to offer any form of reunification services cross [*sic*] state lines, to fly her out to Louisiana to have an in-custody visit with the father. [¶] We have no information from the father. He has not made himself known to the worker that he wants to have custody of her again, nor can he, given his circumstances of being in custody."

The court found based on the reports that "visitation between the child and the incarcerated parent would be detrimental to the child for the reasons set forth in the reports of the Social Services Agency; specifically, the father is incarcerated in Louisiana, the minor is stable in California, and would not benefit from traveling to Louisiana to see the father for an in-custody visit." Father filed this timely appeal to challenge the denial of services.

I. Legal Principles

The standard for determining whether reunification services should be afforded incarcerated parents is provided in Welfare and Institutions Code section 361.5, subdivision (e)(1).[1] In pertinent part, it states: "If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . , the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services . . . and any other appropriate factors." When appropriate, services for an incarcerated parent may include, but are not restricted to, maintaining contact with the child through collect telephone calls, visitation, transportation services, and services for extended family members or foster parents who are providing care for the child. (§ 361.5, subd. (e)(1)(A)–(D)). The service plan may also include counseling and parenting classes, if those services are available. (§ 361.5, subd. (e)(1)(D.)

We review the juvenile court's denial of services to see whether it is supported by substantial evidence, contradicted or uncontradicted. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial

[1] Further statutory citations are to the Welfare and Institutions Code.

court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We will uphold the court's decision if it is correct on any basis, even if the stated reasons are erroneous or incomplete. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1249–1250.)

II. Analysis

The glaring problem here is that there is almost no evidence relevant to the factors the court is supposed to take into account in determining whether offering reunification services will be detrimental to the child. (See § 361.5, subd. (e)(1) ["the court *shall* consider . . ."].) There is nothing in the record about how T.J. felt about Father receiving reunification services — services, we note, that could have been much less disruptive than requiring her to travel to Louisiana, such as the telephone contact that is specifically authorized as a means for an incarcerated parent to maintain contact with a child. (§ 361.5, subd. (1)(A).) Indeed, nothing in the record even suggests any attempt was made to ascertain T.J.'s feelings about this important point. The Agency emphasizes that T.J. asked to be placed with Mother or an aunt or grandmother, but we hardly think her failure to request that she be placed with her father *who was incarcerated at the time* is evidence that she opposed his being given reunification services. The Agency also notes that T.J.'s attorney did not object to the bypass recommendation, but counsel's submission on the Agency's recommendation is not evidence of the T.J.'s "attitude toward the implementation of family reunification services" for her father. (§ 361.5, subd. (e)(1).)

There is no evidence in this record as to how long Father is likely to be incarcerated or his anticipated release date. (§ 361.5, subd.(e)(1).) We have no idea whether he may be released, and thus potentially available to T.J. if her reconciliation with Mother goes astray, during the reunification period. As to the nature of Father's offense, the only evidence is T.J.'s statement that he was arrested for driving under the influence, and Mother's testimony that Father "went to jail with [T.J.] on Christmas and she was in the car. Thank you god that one of my relatives was able to drive." The Agency acknowledged the nature of the charges against Father was "unknown." The most serious inference that can be drawn from all of this is that Father probably drove

under the influence with T.J. in the car. While such facts could support a finding that *custody* with Father would be detrimental to T.J., they do not substantiate the Agency's concern that providing reunification services, such as telephone contact, parenting classes, or even in-jail visitation (see, e.g., § 361.5, subd. (e)(1)(A), (C)), would threaten T.J.'s safety or well-being.

Also missing from the record is any information about the bond that may exist between T.J. and her father that would permit us to determine whether offering or withholding reunification efforts would be detrimental to her. This is particularly disturbing given that T.J. was with her father "every day" for the first nine years of her life and for substantial periods in Louisiana during 2008 and 2010. Clearly father and daughter have a long-established relationship. What is missing is evidence about the nature and degree of their bonding, or whether and to what extent T.J. might be harmed if Father is refused services.

"All parents, unless and until their parental rights are terminated, have an interest in their children's 'companionship, care, custody and management. . . .' [Citation.] This interest is a 'compelling one, ranked among the most basic of civil rights.' [Citation.] While the overarching goal of the dependency law is to safeguard the welfare of dependent children and to promote their best interests [citations], the law's first priority when dependency proceedings are commenced is to preserve family relationships, if possible. [Citation.] To this end, the law requires the juvenile court to provide reunification services unless a statutory exception applies." (*In re K.C.* (2011) 52 Cal.4th 231, 236; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010–1012 [incarcerated parent].) Here, unfortunately, the court bypassed reunification services for Father without any evidence or apparent consideration of T.J.'s attitude toward provision of services, the nature of her bond with her father, the potential detriment that could arise from denial of reunification services, or the likelihood that Father would be released during the reunification period. There was some evidence of the nature of Father's offense, but a drunk driving violation, although serious, does not in and of itself justify depriving an incarcerated parent the chance to reunify with a child.

Of course, the court did not find that it does. To the contrary, the record indicates the court based its finding of detriment solely on the impact to T.J. if she were to travel to Louisiana for visitation. But without evidence that providing other, less disruptive services such as facilitated telephone or written contact or counseling and parenting classes (if available to Father in Louisiana) would be detrimental to T.J., the bypass of services is unsupported and unwarranted.

The Agency's contrary arguments are a hodgepodge of conjecture. Based on evidence that Father had prior arrests for being under the influence in 2003 and 2004, it hypothesizes that he "was under the influence of alcohol or drugs on more than just those occasions" and that he therefore "was either physically not with the minor, or mentally not there with the minor" during those " 'under the influence' times." It posits that there is "no significant bond" between T.J. and her father, no matter how much time they spent together, because (1) T.J. never told her caseworkers that she wanted to visit or live with Father in Louisiana, and (2) by the disposition hearing, Father had not responded to notices that were sent to him in jail in Louisiana *less than 14 days before that hearing*. The Agency submits that this, along with T.J.'s apparently improving relationship with Mother and counsel's submission on the bypass recommendation, is enough to show there would be no harm to T.J. if Father is not offered services. It is not. "[S]ubstantial evidence is not synonymous with any evidence. [Citation.] 'A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding*." ' " (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216–217.)

DISPOSITION

The order bypassing Father's reunification services is reversed.

_____
Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Jenkins, J.